

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FILED

NOV 22 2005

EUGENE R. WEDOFF  
BANKRUPTCY JUDGE

Case No. 02 B 2297 BANKRUPTCY

In re: )  
 )  
 )  
**EMERALD CASINO, INC.** )  
 )  
Debtor. )

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER AWARDING TO  
KIRKLAND & ELLIS LLP, ATTORNEYS FOR DEBTOR, FOR ALLOWANCE AND PAYMENT OF  
INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES  
(TWELFTH QUARTERLY FEE APPLICATION)**

<b>TOTAL FEES REQUESTED:</b>	<b>\$388,379.50</b>	<b>TOTAL COSTS REQUESTED:</b>	<b>\$15,044.23</b>
<b>TOTAL FEES REDUCED:</b>	<b>\$ 2,884.00</b>	<b>TOTAL COSTS REDUCED:</b>	<b>\$ 8,321.83</b>
<b>TOTAL FEES ALLOWED:</b>	<b>\$385,495.50</b>	<b>TOTAL COSTS ALLOWED:</b>	<b>\$ 6,722.40</b>

**TOTAL FEES AND COSTS ALLOWED: \$392,217.90**

THE COURT HAS UNDERLINED THE ATTACHED TIME AND EXPENSE ENTRIES THAT HAVE BEEN DISALLOWED IN WHOLE OR IN PART. THE NUMERICAL NOTATION THAT APPEARS ON THE RIGHT SIDE OF EACH HIGHLIGHTED ENTRY DISCLOSES THE BASIS FOR EACH DISALLOWANCE. THE NUMERICAL NOTATIONS REFER TO THE ENUMERATED PARAGRAPHS BELOW.

#### **(2) Improper Allocation of Professional Resources**

The Court denies the allowance in part of compensation for the following task since a professional with a lower level of skill and experience or a paraprofessional could have performed the task. *In re Pettibone*, 74 B.R. 293, 303 (Bankr. N.D. Ill. 1987) ("Senior partner rates will be paid only for work that warrants the attention of a senior partner. A senior partner who spends time reviewing documents or doing research a beginning associate could do will be paid at a rate of a beginning associate. [Citation omitted]. Similarly, non-legal work performed by a lawyer which could have been performed by less costly non-legal employees should command a lesser rate."); *In re Wildman*, 72 B.R. 700, 710 (Bankr. N.D. Ill. 1987) (same); *In re Alberto*, 121 B.R. 531, 535 (Bankr. N.D. Ill. 1990) (determining use of partner appropriate where attendant complex legal issues warrant highly experienced practitioner).

## **(2) Overhead Costs are Non-Compensable**

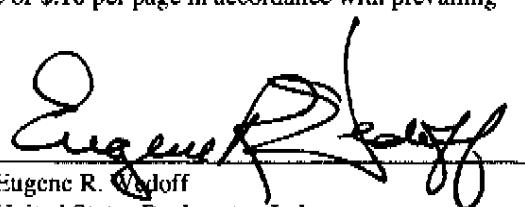
The Court denies reimbursement for fees or expenses that are overhead costs. Expenses that are overhead are not compensable because they are built into the hourly rate. See *In re Wildman*, 72 B.R. 700, 731 (Bankr. N.D. Ill. 1987). Overhead, for bankruptcy purposes, includes "all continuous administrative or general costs or expenses incident to the operation of the firm which cannot be attributed to a particular client or cost." *In re Convent Guardian Corp.*, 103 B.R. 937, 939-40 (Bankr. N.D. Ill. 1989) (quoting *In re Thacker*, 48 B.R. 161, 164 (Bankr. N.D. Ill. 1985)). Absent extraordinary circumstances, the court will not reimburse an applicant for local parking and transportation at the estate's expense. See *In re Convent Guardian Corp.*, 103 B.R. 937, 940-944 (Bankr. N.D. Ill. 1989).

**(3) Reimbursement Limited to Actual, Necessary Expenses**

The Court denies the allowance of reimbursement for expenses that were not actually and necessarily incurred by the applicant. See 11 U.S.C. §§330(a)(1)(B) & 331. The fee application fails to demonstrate that the requested expenses for photocopies or facsimiles (or both) were actual out-of-pocket disbursements and that the quoted rates were necessary in light of prevailing (and lower) commercial rates. In the absence of such proof, the

Court will allow reimbursement of photocopy expenses at a rate of \$.10 per page in accordance with prevailing commercial rates and will not allow expenses for facsimiles.

Dated: November 22, 2005

  
\_\_\_\_\_  
Eugene R. Goldoff  
United States Bankruptcy Judge

Emerald Casino, Inc.  
7 Case Administration

Legal Services for the Period Ending July 31, 2005

**Description of Legal Services**

<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
7/05/05	Jesse Aguilar	.30	Assist in the preparation of pleading to be filed with the Bankruptcy Court.
7/06/05	Sven T Nylen	.50	Draft and update critical dates memorandum.
7/12/05	Scott F Walker	2.30	Assist in the preparation of Emerald adversary to be filed and file same with the Court.
7/14/05	Sven T Nylen	.30	Prepare monthly operating report for filing and service.
7/15/05	David Andrews	1.10	Retrieve Emerald Casino order from bankruptcy court and distribute to S. Nylen. (1)
7/22/05	Sarah Sanchez	.20	Update electronic database re recent pleadings (.1); update index re same (.1).
7/25/05	David Andrews	1.20	Assist in preparation and electronic filing of Emerald Casino documents in bankruptcy court.
7/26/05	Claude W Irmis	.50	Retrieve and review IGB letter re audio tape recording request (.2); assemble, prepare and distribute revised request (.3)
7/27/05	Claude W Irmis	.60	Review, revise and distribute letter to IGB re audio tape recording.
		7.00	TOTAL HOURS

Emerald Casino, Inc.  
18 Administrative Proceedings

Legal Services for the Period Ending July 31, 2005

DISBURSEMENT DETAIL

	<u>Description</u>	<u>Amount</u>
6/30/05	West Publishing-TP,Database Usage 6.05	3.16
6/30/05	West Publishing-TP,Database Usage 6.05	9.16
7/05/05	Standard Copies	1.00
7/07/05	Standard Copies	74.90
7/07/05	Standard Copies	.10
7/07/05	Standard Copies	.40
7/07/05	Standard Copies	2.20
7/07/05	Standard Copies	2.20
7/07/05	Standard Copies	8.60
7/07/05	Standard Copies	8.50
7/07/05	Standard Copies	8.30
7/07/05	Standard Copies	.50
7/07/05	Standard Copies	.40
7/07/05	Standard Copies	1.10
7/07/05	Standard Copies	.70
7/07/05	Standard Copies	2.20
7/07/05	Standard Copies	.50
7/07/05	PACER SERVICE CENTER - Computer Database Research, 4/1/05 to 6/30/05 SVen Nylen	2.88
7/08/05	Standard Copies	.10
7/11/05	Standard Copies	2.40
7/11/05	Standard Copies	.50
7/11/05	Standard Copies	.70
7/11/05	Standard Copies	1.60
7/11/05	Standard Copies	3.70
7/12/05	Standard Copies	.40
7/12/05	Standard Copies	117.90
7/12/05	Standard Copies	1.60
7/12/05	Standard Copies	2.50
7/12/05	Standard Copies	.20
7/12/05	Standard Copies	3.60
7/12/05	Standard Copies	3.60
7/12/05	Standard Copies	.20
7/12/05	Standard Copies	.20
7/12/05	Standard Copies	.10
7/12/05	Standard Copies	.10
7/12/05	Standard Copies	.10
7/12/05	Standard Copies	.20
7/12/05	Standard Copies	1.90
7/12/05	Standard Copies	.30
7/12/05	Standard Copies	.50

Emerald Casino, Inc.  
19 Post-Confirmation / Consummation

Legal Services for the Period Ending July 31, 2005

DISBURSEMENTS SUMMARY

Telephone	165.92
Standard Copies	818.90
Tabs/Indexes/Dividers	.70
(3) Color Copies	81.00
Postage	1.72
Outside Messenger Services	71.30
Local Transportation	10.00
Court Reporter Fee/Deposition	66.00
Investigators	433.00
(2) Computer Database Research	1,859.64 less Pacer = 1789.72
Total	\$ 3,508.18

Emerald Casino, Inc.  
18 Administrative Proceedings

Legal Services for the Period Ending August 31, 2005

DISBURSEMENT DETAIL

	<u>Description</u>	<u>Amount</u>
7/05/05	West Publishing-TP,Database Usage 7.05	11.67
7/05/05	West Publishing-TP,Database Usage 7.05	8.15
7/06/05	West Publishing-TP,Database Usage 7.05	27.93
7/06/05	West Publishing-TP,Database Usage 7.05	32.32
7/07/05	West Publishing-TP,Database Usage 7.05	2.94
7/11/05	West Publishing-TP,Database Usage 7.05	104.96
7/12/05	West Publishing-TP,Database Usage 7.05	3.95
7/14/05	West Publishing-TP,Database Usage 7.05	1.67
7/14/05	West Publishing-TP,Database Usage 7.05	43.85
7/15/05	West Publishing-TP,Database Usage 7.05	55.38
7/19/05	West Publishing-TP,Database Usage 7.05	77.85
7/21/05	West Publishing-TP,Database Usage 7.05	75.49
7/25/05	West Publishing-TP,Database Usage 7.05	40.24
7/26/05	West Publishing-TP,Database Usage 7.05	67.81
7/27/05	West Publishing-TP,Database Usage 7.05	80.40
7/28/05	West Publishing-TP,Database Usage 7.05	56.56
7/29/05	West Publishing-TP,Database Usage 7.05	49.62
Total Disbursements		\$ 740.79

Emerald Casino, Inc.  
19 Post-Confirmation / Consummation

Legal Services for the Period Ending August 31, 2005

DISBURSEMENTS SUMMARY

Telephone	201.77
Standard Copies	1,176.60
Binding	7.00
(3) Tabs/Indexes/Dividers	1.20
Color Copies	483.00
Standard Copies NY	10.50
Postage	84.39
Overnight Delivery	15.29
Outside Messenger Services	534.40
Court Reporter Fee/Deposition	51.00
(2) Information Broker Doc/Svcs	27.00
Computer Database Research	3,518.78
Total	\$ 6,110.93

Emerald Casino, Inc.  
19 Post-Confirmation / Consummation

Legal Services for the Period Ending September 30, 2005

<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
9/21/05	Ashley C Parrish	.20	Conference with S. Nylen re obtaining copy of Supreme Court's decision in Crusius.
9/22/05	Joseph U Schorer	1.20	Prepare for and attend bankruptcy court status conference (1.0); telephone conference with S. Nylen and J. Sprayregen re same (.1); telephone conference via voicemail with R. Gasaway re Crusius decision (.1).
9/22/05	Sven T Nylen	8.00	Draft talking points re non-bankruptcy litigation schedule for September 22 hearing (.5); conference with J. Schorer re same (.2); telephone conference with M. Krzak re same (.3); draft motion to extend plan deadlines and circulate to Committee and statutory applicants (.8); revise letter to Attorney General and circulate to B. Clifford and client (.5); draft talking points re motion for reconsideration (4.0); telephone conference with R. Gasaway re drafting status report (.2); review Crusius decision and circulate to clients (1.0); exchange voicemails with J. Sprayregen re September 27 hearing (.2); telephone conference with M. Krzak re case status (.3).
9/22/05	Robert R Gasaway	4.00	Review Illinois Supreme Court decision re Crusius (2.8); discuss same with J. Schorer and J. McMahon (1.0); discuss drafting status report re same with S. Nylen (.2).
9/22/05	Ashley C Parrish	1.00	Review Supreme Court's decision in Crusius upholding constitutionality of the Riverboat Gambling Act (.6); telephone conference with J. McMahon and R. Gasaway re same (.2); voicemails from J. Schorer re same (.2).
9/23/05	Joseph U Schorer	3.00	Review and comment on letter to Attorney General (1.0); review Crusius decision and consider implications of same for plan and plan alternatives (1.0); review various transcripts re same (1.0).
9/23/05	Sven T Nylen	8.10	Prepare motion to extend plan deadlines for filing (.3); revise letter to Attorney General per internal comments (1.0); draft talking points for September 27 hearing on motion for reconsideration (3.5); telephone

Emerald Casino, Inc.  
19 Post-Confirmation / Consummation

Legal Services for the Period Ending September 30, 2005

<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
			conference with A. Parrish re same (.3); prepare binder of materials for September 27 hearing per J. Sprayregen's request (3.0).
9/23/05	John C Crees	3.60	Prepare and distribute various binders re adversary proceeding hearing.
9/23/05	Robert R Gasaway	1.40	Prepare status report re Crusius decision (1.2); prepare hearing talking points for reconsideration argument (.2).
9/23/05	Ashley C Parrish	1.40	Review and edit talking points for oral argument re reconsideration (.7); conference with S. Nylen re same (.5); review emails re status conference before Judge Wedoff (.2).
9/25/05	Joseph U Schorer	.50	Review hearing transcripts for impact on alternative plan strategies.
9/26/05	Joseph U Schorer	1.10	Telephone conferences with L. Neal and with J. Sprayregen via voicemail re statutory applicants' position on letter to Attorney General (.1); office conference with S. Nylen re letter revisions (.1); review certain materials to prepare for motion for reconsideration and to send status report to court (.9).
9/26/05	Sven T Nylen	5.00	Prepare briefing binder and argument materials for September 27 hearing for J. Sprayregen (3.5); revise status report and supervise filing of same (.5); revise correspondence to Attorney General re case resolution and forward same (.7); office conferences with J. Schorer re same and Sept. 27 hearing (.3).
9/26/05	Robert R Gasaway	.20	Prepare and review final talking points re reconsideration argument and status report.
9/27/05	Joseph U Schorer	1.00	Telephone conference with R. Clifford re settlement strategy (.5); office conference with S. Nylen re hearing on motion to reconsider (.2); office conference with S. Nylen re strategy issues re settlement (.2); telephone conference with S. Nylen re hearing on motion to reconsider (.1); review transcripts from revocation hearing for

Emerald Casino, Inc.  
19 Post-Confirmation / Consummation

Legal Services for the Period Ending September 30, 2005

DISBURSEMENTS SUMMARY

Telephone	28.70
Standard Copies	288.10
Postage	8.26
Outside Messenger Services	165.30
Local Transportation	40.00
(3) Airfare	1,462.81
Transportation to/from airport	48.00
Travel Meals	8.00
Filing Fees	150.00
(2) Computer Database Research	961.97
Total	\$ 3,161.14